View metadata, citation and similar papers at core.ac.uk

brought to you by CORE

provided by University of Kentucky

Kentucky Law Journal

Volume 6 | Issue 2 Article 4

1918

Reported Cases as Precedents

Charles B. Seymour
University of Louisville

Follow this and additional works at: https://uknowledge.uky.edu/klj

Part of the Legal History Commons

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Seymour, Charles B. (1918) "Reported Cases as Precedents," *Kentucky Law Journal*: Vol. 6 : Iss. 2 , Article 4.
Available at: https://uknowledge.uky.edu/klj/vol6/iss2/4

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

REPORTED CASES AS PRECEDENTS.

By Charles B. Seymour.*

As law is a rule of conduct, every decision tends to become evidence of the rule followed in it. Much law is not statutory; but even statutory law comes to be enforced according to the construction of it given in decided cases. There is a Jewish saying: "The words of the law are some heavy and some light; but the words of the scribes are all heavy." The practical question was, "What did the law as interpreted by the scribes (or courts) mean?"

In early Greek times the king, acting as judge, was supposed to be the exponent of "Themis"—a rule of decision furnished him by inspiration from the gods at the moment of deciding; yet even there the decision was greatly affected in fact by previous decisions.

The great mass of English law is not in its origin statutory. Indeed, as late a sovereign as Edward the First is called the English Justinian; and his reign is styled "The Age of Statutes."

Naturally, in England the decisions were reported; and it is claimed that the reporters of the year books were appointed to make the reports. The reports, however, were reports of decisions —not of written opinions. The earliest enactment (so far as I can find) that requires common law or chancery judges to render written opinions, is found in the first Constitution of Kentucky, Article Five, Section Three.

Lord Bacon sought to have the practice of appointing reporters revived. Hetley's Common Pleas Reports is the only volume since the Year Books that purports to have been prepared by an official reporter; strange to say, the only edition of this report bears date in Cromwell's time, A. D. 1657, eight years after the king was beheaded.

Up to Cromwell's time the reports were almost exclusively in French; and after the Restoration the custom of reporting in

*Dean of University of Louisville Law School; member Louisville bar.

French was revived and continued during the reign of Charles the Second.

The custom of reporting written opinions has become universal in the United States. As a consequence, there is a tendency on the part of the bench and bar to give such study to opinions as would be given to statutes—a tendency that sometimes results in changes in the law as administered. If in an opinion rendered on the affirmance of a judgment, there occurs a sentence giving an incorrect statement of law, but in no way affecting the decision, the parties have no motive to apply for a modification, sometimes a similar state of case exists on a reversal. The opinion may therefore not represent the same careful study by the judges that would be had on a petition for rehearing. The publication of the decisions of courts not of last resort, such as the county courts in Pennsylvania, and the citation of same in compilations of the law, like the great cyclopaedias, are seriously affecting the quality of our law Indeed, the publication of all the opinions of courts of last resort of all the States for use by the bar and the judges of each of the States has brought about a state of things that would have surprised Sir Edward Coke or Sir William Blackstone.